

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JASMINE S. EMERY,
An individual

Civil Action No.:

Plaintiff,

HON.

vs.

SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION

Defendant.

Robert M. Howard (P80740)
Bradley K. Glazier (P35523)
CUNNINGHAM DALMAN, P.C.
Attorneys for Plaintiff
940 Monroe Avenue, N.W., Suite 253
Grand Rapids, MI 49503
(616) 458-6814

INTRODUCTION

This is a case involves the claims of Jasmine Emery, a Smart Bus driver, who is a breastfeeding mother. Ms. Emery recently returned to work following her maternity leave. Emery has requested that SMART Bus accommodate her need to pump breast milk during her working hours in a private, clean room, free from intrusion by coworkers. SMART Bus has failed in its obligation to do so, instead reducing Emery’s hours. When Emery stayed at work to earn sufficient wages, without an accommodation, her milk production has suffered. Emery brings this case for violations of the recently enacted PUMP Act.

VERIFIED COMPLAINT AND JURY DEMAND

Plaintiff Jasmine Emery, by her counsel, Cunningham Dalman PC, states as her Complaint against defendant Suburban Mobility Authority for Regional Transportation (“SMART Bus”) as follows:

JURISDICTIONAL ALLEGATIONS

1. Jasmine Emery, brings this action against defendant SMART Bus. Plaintiff seeks appropriate relief based on defendant’s willful failure to comply with the Providing Urgent Maternal Protections Act (“PUMP”) as required by the Fair Labor Standards Act (“FLSA”) and Michigan’s Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq* (“ELCRA”).

2. This is an action brought under the PUMP Act for defendant’s failure to provide reasonable breaks for plaintiff to express milk and failing to provide a secure clean space for plaintiff to express milk.

3. This action is brought under ELCRA for defendant’s discrimination against plaintiff on the basis of her sex and gender.

4. This court has subject matter jurisdiction over the FLSA claim pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) as it is a civil action arising under the laws of the United States. The court has pendent jurisdiction over plaintiff’s state ELCRA claim.

5. Jasmine Emery is a citizen of the United States and the State of Michigan. She resides in Oakland County.

6. Emery was an individual employed by defendant and was a covered “employee” pursuant to 29 U.S.C. § 203(e).

7. Defendant SMART Bus is a governmental sponsored public transportation authority statutorily created pursuant to MCL 124.401 *et. seq.* that operates in Macomb, Oakland, and Wayne counties in Michigan.

8. SMART Bus is an “enterprise engaged in commerce or in the production of goods for commerce” as it had “employees engaged in commerce or in the production of goods for commerce” and “is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000” 29 U.S.C. § 203(s)(1)(A). As such, SMART Bus was a covered enterprise under the terms of the FLSA.

9. Venue in this Court is proper under 28 U.S.C. § 1391(b) because the parties reside in this district and a substantial part of the events giving rise to the claims raised occurred in this district.

GENERAL ALLEGATIONS

10. Plaintiff Emery is a 33-year-old mother of four children. She resides in Oakland County, Michigan, and worked within the boundaries of the Eastern District of Michigan.

11. In December of 2023, Emery gave birth to her youngest son.

12. Emery chose to breastfeed her son. When she is at work, Emery must pump her breastmilk at regular intervals.

13. Emery has worked SMART Bus for over three years.

14. Emery drives a public bus on routes assigned by SMART Bus, throughout Oakland, Macomb, and Wayne counties.

15. Emery was on maternity leave from October 1, 2023, until April 2024.

16. Emery submitted a return to work slip to SMART Bus. (Exhibit 1).

17. Emery needs to pump and store her milk approximately every two hours to maintain enough milk to feed her son.

18. Emery contacted the human resources department at SMART Bus to find out how her pumping would be accommodated at work.

19. SMART Bus management told Emery that it would try to accommodate her needs to pump, but could not make any guarantees.

20. SMART Bus management did not have an area available for Emery to pump milk that was secure or a restroom.

21. Dashia Parrish, an HR representative at SMART Bus, referred Emery to De'Shalon Brownlee, Smart Bus's vice president of bus operations.

22. On April 9, during a phone call, Emery informed Brownlee that she needed an electrical outlet to use her breast pump.

23. On April 10, 2024, Emery informed Brownlee by email that she needed an accommodation to pump breastmilk at work. (Exhibit 2).

24. Emery was directed to use a training room at SMART Bus' facility.

25. Emery was not able to secure the door of the room she was directed to use.

26. SMART Bus directed Emery to put a chair against the door and a note on the outside.

27. While pumping milk on April 10, in the unsecured room, a male employee pushed past the chair and interrupted Emery while she had her breasts exposed.

28. There were shifts where Emery left early to pump milk at home. (Exhibit 3, April 11 email).

29. SMART Bus told Emery that she could pump breast milk in the bus while she was on break.

30. Emery informed SMART Bus that there was no outlet for her pump.

31. Instead of finding a suitable location for pumping milk, SMART Bus purchased a breast pump that did not require an electrical outlet and told Emery to pump on the bus. The purchased pump was a hands free pump that SMART Bus expected Emery to use while driving her route.

32. Emery refused to pump milk on the public bus.

33. On April 15, Emery met with Brownlee and Toy Mosely, the union steward, to find a solution to her need to pump at work. SMART bus refused to lock the door. Mosely instructed Emery to continue to use a chair against the door. Brownlee said she would put a note on the door.

34. SMART Bus has attempted to outsource its responsibility to provide a room for lactation to other public entities and businesses.

35. SMART Bus directed Emery to use the lactation room at McLaren Hospital.

36. But McLaren Hospital would not allow Emery, who is not a McLaren employee, to use its lactation room. Emery was instead referred to the public lounge at McLaren, which is not private.

37. SMART Bus directed Emery to use a room at Oakland University.

38. But the room at Oakland University is not easily accessible and its hours are restricted.

39. SMART Bus told Emery that she could be accommodated on her route near the State Fairgrounds until approximately May 9, 2024.

40. But the only bathroom available at the State Fair Center during Emery's shift is a porta john.

41. Emery's hours were reduced after she requested accommodations to pump milk.

42. SMART Bus' dispatcher told Emery that Brownlee had instructed dispatch not to schedule Emery.

43. Emery asked if SMART Bus would put a lock on the training room door in its facility so she could pump milk there.

44. SMART Bus told Emery that she could use the room, but no lock would be provided. She could use the ineffective chair against the door technique if she chose to pump there.

45. On April 18, Emery provided 10 days' notice to SMART Bus of its need to accommodate her pumping at work. (Exhibit 4).

46. On April 23, SMART Bus told Emery that she would only be accommodated with one break to pump milk in the unsecured room at the SMART Bus terminal.

47. Emery informed Brownless that one break to express milk during her shift was insufficient.

48. Brownlee told Emery that one break was the accommodation she was going to receive.

49. SMART Bus continues to fail in its requirement to provide Emery with a private, secure room to express milk for her child.

COUNT I
VIOLATION OF FAIR LABOR STANDARDS ACT
(Interference with mother's right to pump breastmilk)

50. Plaintiff Emery incorporates by reference paragraphs 1 through 49 as fully set forth herein.

51. THE PUMP Act requires that employers provide: (1) a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk; and (2) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. 29 U.S.C. § 218d.

52. SMART Bus refused to allow Emery sufficient reasonable break time to express milk for her child.

53. SMART Bus refused to provide a room free from intrusion from coworkers and the public.

54. SMART Bus required that Emery leave the premises to pump milk.

55. Emery's rights to a place to pump milk free of intrusion from other employees has been interfered with.

56. When Emery was not provided a space to pump, her milk production for her child was reduced.

COUNT II
VIOLATION OF FAIR LABOR STANDARDS ACT
(Retaliation mother's right to pump breastmilk)

57. Plaintiff Emery incorporates by reference paragraphs 1 through 56 as fully set forth herein.

58. Emery is a breastfeeding mother with a child under one year old.

59. SMART Bus had actual notice of Emery's need to pump breastmilk at work to supply her infant with sufficient nutrition.

60. SMART Bus eliminated scheduled shifts of Emery's because of Emery's need to pump milk for her infant.

61. Defendants willfully, intentionally, and unlawfully retaliated against Emery by reducing her hours based on her lawful need to pump breastmilk.

62. Defendants discriminated against Emery her as a result of her protected conduct.

WHEREFORE, Emery respectfully requests this court to enter a judgment in her favor and against SMART Bus as follows:

A. Legal Relief

- (1) Compensatory damages;
- (2) Liquidated damages equal to the amount of compensatory damages awarded; and
- (3) An award of interest, costs, and reasonable attorney fees and expert witness fees.

B. Equitable Relief

- (1) An injunction prohibiting any further acts of wrongdoing and comply with the PUMP Act;
- (2) An injunction ordering SMART Bus to provide a private space free from intrusion by coworkers and the public to express milk; and
- (3) Whatever other equitable relief appears appropriate at the time of final judgment.

CUNNINGHAM DALMAN, P.C.
Attorneys for Plaintiff

Date: May 1, 2024

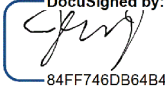
By: /s/ Robert M. Howard
Robert M. Howard (P80740)
Bradley K. Glazier (P35523)

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VERIFICATION

I, Jasmine Emery, declare as follows:

1. I am an adult competent to testify to the matters stated herein.
2. I have read the foregoing Verified Complaint and based upon my personal knowledge of the facts stated therein are true to the best of my knowledge and belief.
3. If called upon to testify, I would competently testify as to the matters stated herein.
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

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 Jasmine Emery

JURY DEMAND

Plaintiff, Jasmine Emery, requests a trial by jury.

CUNNINGHAM DALMAN, P.C.
Attorneys for Plaintiff

Date: May 1, 2024

By: /s/ Robert M. Howard
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